

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 03-74628

SAN LUIS OBISPO MOTHERS FOR PEACE, et al.

Petitioners-Appellants

v.

U.S. NUCLEAR REGULATORY COMMISISON,

Defendants-Appellees,

PACIFIC GAS AND ELECTRIC COMPANY, et al.

Intervenors

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INTRODUCTION AND INTEREST OF THE AMICUS CURIAE
SAN LUIS OBISPO COUNTY

Amicus Curiae, the County of San Luis Obispo ("County"), has substantial interests in this case because of its unique responsibilities for dealing with the potential environmental impacts that could be experienced by the County and its residents as a result of a terrorist attack on the new Independent Spent Fuel Storage Installation ("ISFSI") which Pacific Gas & Electric ("PG&E") proposes to construct and operate on the site of the Diablo Canyon Nuclear Power Plant ("DCNPP").

The ISFSI would be a new facility that would store nuclear spent fuel from DCNPP and would not be nearly as robust as a nuclear power plant. A terrorist attack on this new target could result in the release of substantial quantities of radioactive material, exposing the County's citizens to personal injury and the County's property to long-term radiological contamination. All normal activities, including business and education, would be disrupted. The County has significant responsibilities for responding to the full extent of environmental impacts that could reasonably result from a successful terrorist attack on the proposed ISFSI and would be required to expend significant resources in dealing with the environmental impacts of a terrorist attack.

Despite the NRC increased security requirements at ISFSIs since the terrorist attack of September 11, 2001, the NRC determined that an attack on

PG&E's ISFSI would be too remote and speculative to require consideration of its environmental impacts. Accordingly, the NRC rejected all of the terrorism-related environmental issues which the County and its citizens proffered and refused to conduct a hearing on alternatives for addressing terrorist attacks on the ISFSI and mitigation measures which could have been considered under the National Environmental Policy Act of 1969, 42 U.S.C. § 4321, *et seq*, as amended ("NEPA").

The Commission, consistent with its history of crabbed interpretations of NEPA, determined that it was not required it to consider the environmental impacts of a terrorist attack. Essentially, the NRC found that the public, except for the reactor licensees, has nothing to contribute to the agency's consideration of environmental impacts arising from terrorist attacks against an ISFSI. The NRC ignored its own precedent on holding hearings on security concerns to find that no meaningful discussion of those environmental impacts could be conducted in public without compromising security.

Had the NRC permitted the County to participate in the NRC's proceeding on the ISFSI, the County would have been able to apply its unique expertise about the local environment, health and security facilities, and response capabilities to enable a complete consideration of alternative ISFSI sites and mitigation measures for the environmental impacts of a terrorist attack on the

ISFSI. The type of contribution the County could have made is illustrated by the “Diablo Canyon Independent Spent Fuel Storage Installation (ISFSI) Final Environmental Impact Report” prepared for the County's Department of Planning and Building (“EIR”). As discussed in detail in the argument, the EIR shows that terrorist-related environmental impacts can be meaningfully considered in public, without the need to consider classified information, thus refuting the NRC’s unsupported claims to the contrary. The NRC's attempt to hide behind security concerns to avoid its NEPA responsibilities is not sound public policy. For the County's citizens to have confidence in the measures taken to protect them from the environmental impacts of terrorist attacks on the ISFSI, the citizens, through their elected representatives, must have an opportunity to have their concerns considered at an adjudicatory hearing. By failing to do this, the Commission has left the citizens who live nearest the ISFSI uncertain about their protection from risks created by installation and operation of this new facility.

Having been precluded from raising these issues before the NRC, the County has filed this *amicus* brief pursuant to the Federal Rules of Appellate Procedure 29(a), and in exercise of its authority to protect the health, safety, and natural resources of the County of San Luis Obispo. The County supports the San Luis Obispo Mothers for Peace in their request that this Court direct the NRC to conduct a hearing where the potential environmental impacts of a terrorist

attack on PG&E's ISFSI can be evaluated and the NRC's authority to mitigate any such impacts can be exercised to the greatest extent possible.

ARGUMENT

I. The Commission Improperly Found that a Terrorist Attack Is A Speculative Consequence Of Licensing An ISFSI

The Commission's determination that a terrorist attack on the ISFSI is speculative is an unsupportable conclusion. This is clear from the Commission's inconsistent statements in the *PFS* decision incorporated into the Commission denial on appeal here.¹ On the one hand, the Commission contends that the link between licensing an ISFSI and a damaging terrorist attack is too remote and speculative to be considered under NEPA.

In addition, terrorists seeking to cause havoc and destruction would find many targets far more inviting than the proposed PFS facility. That facility would be located in a remote, desert location far from population centers. And it would use NRC-approved strong storage casks, which are designed to minimize the effects of off-normal events and accidents. Given this setting, a terrorist attack seemingly would be quite unlikely to result in a high-consequence release of radioactivity.

PFS, 56 N.R.C. at 351. (footnotes omitted.)

¹ It should also be noted that the NRC relied on the *PFS* decision without explaining why the differences between the proposed location of the PFS facility and the Diablo Canyon ISFSI did not make the *PFS* decision inapplicable to this case. Unlike the proposed PFS site, the Diablo Canyon site is not in the middle of a desert and is not far removed from population centers.

On the other hand, the Commission has required ISFSI licensees to increase the security measures for protecting the ISFSIs,² thus establishing a clear link between the licensing of an ISFSI and the threat of a terrorist attack.³

We hasten to add that our decision against including terrorism within our NEPA reviews does not mean that we plan to rule out the possibility of a terrorist attack against NRC-regulated facilities. On the contrary, as we outlined above, the Commission and its staff have taken steps to strengthen security and are in the midst of an intense study of the effects of postulated terrorist attacks and of our relevant security and safeguards rules and policies. But we see no practical benefit in conducting that review, case-by-case, under the rubric of NEPA, nor any legal duty to do so.

PFS, 56 N.R.C. at 347-48.

The Commission cannot have it both ways. It cannot tell the world that it recognizes the threat of terrorism and is responding to it while, at the same time, tell the citizens who live near nuclear facilities and their elected representatives that the environmental impacts of terrorist attacks are so speculative that neither those impacts nor alternatives to mitigate them can be considered meaningfully under NEPA. Such inconsistent statements diminish public confidence. More

² ISFSIs have always been required to have security plans designed to protect them from attack. 10 C.F.R. Part 72, Subpart H. Since the events of September 11, 2001, the NRC has required its licensees to substantially enhance those security plans to take into account the heightened threat of terrorist attack. See, *PFS*, 56 N.R.C. at 344-45.

³ Diablo Canyon is located directly on the California coast, thus exposing the ISFSI to off-shore attack. The Coast Guard recognized this vulnerability and imposed a 2,000 yard security zone from the shoreline into the waters adjacent to the DCNPP. 67 Fed. Reg. 15117 (March 29, 2002).

importantly, the NRC has cut itself off from the practical benefit of the unique local knowledge that the County's citizens and elected representatives would bring to a consideration of alternative measures to mitigate the environmental impacts of terrorist threats. Thus, the NRC failed in its duty to comply with NEPA's mandate to the fullest extent possible, *Calvert Cliffs' Coordinating Committee v. United States Atomic Energy Com.*, 449 F.2d 1109, 1112 (D.C.Cir. 1971), *cert. denied*, 404 U.S. 942 (1972), by taking a "hard look" at alternatives that could mitigate or avoid environmental impacts arising from a federal action, *Metcalf v. Daley*, 214 F.3d 1135, 1141 (9th Cir. 2000), and by considering every reasonable alternative in a manner sufficient to make a reasoned choice about how the environmental impacts from terrorism could be limited or mitigated. *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1520 (9th Cir. 1992).

Had the County been permitted to raise NEPA issues in the licensing hearing, it would have provided information about medical, police and other services that would be called upon in the event of a successful terrorist attack on the ISFSI. The County also would have provided detailed information about the local environment and its implications for siting alternatives. Examples of what

the County could have contributed are provided in the attached relevant portions of the County's EIR.⁴

A review of the County EIR shows that it contains a meaningful qualitative analysis of the environmental impacts of a terrorist attack on the ISFSI. In presenting this report as an example, the County is not suggesting that this is exactly what the NRC should have done, or that this analysis is definitive. The County's only point is that such an analysis could have been conducted by the NRC, in public, and in a way that assures the County's citizens that the threat of terrorism has been thoroughly considered and fully addressed. This NRC refusal to consider an important aspect of the problem before it on the basis of a decision that runs counter to the evidence before it must be reversed as arbitrary and capricious. *O'Keeffe's Inc. v. United States Consumer Prod. Safety Comm'n*, 92 F.3d 940 (9th Cir. 1996).

EIR Subsection 3.11, System Safety/Risk of Upset evaluated the environmental impacts of a possible terrorist attack on the ISFSI. EIR 3-199 to 3-253. Among the terrorist threats considered was an intentional aircraft strike. EIR 3-236 to 3-239. Although an intentional strike by a large aircraft was considered difficult, it was still considered feasible in light of recent events.

⁴ An EIR was prepared as part of the process for evaluating the coastal development permit application that was submitted by PG&E pursuant to the California Public Resources Code, Section 30600(a).

When coupled with a cited lack of consensus among the experts regarding the capability of ISFSI storage casks to withstand a direct hit by a large airplane, the conclusion was to consider the consequences of such an attack. A breach of the storage cask's containment could cause the zirconium tubes which form the spent fuel rods to catch fire and result in the airborne spread of radioactive materials around the vicinity of the ISFSI.

Mitigation measures were proposed to deal with such a scenario. EIR 3-245 to 3-246. They include changes to the design of the cask and storage pad on which it rests, a fire protection system, and additional, specific provisions in the DCCP emergency response plan.^{5,6} Here, too, the point is not that the NRC should have adopted these particular mitigating measures, but that the NRC could have developed a set of realistic mitigating measures, and reviewed them in a public forum, had it not rejected any consideration of the environmental impacts of a terrorist threat.

Several other terrorist attack scenarios were considered. EIR 3-248 to 3-251. Some were promptly dismissed as too improbable given the difficulty of

⁵ The County ultimately concluded that federal pre-emption under the AEA precluded it from imposing any alternatives or mitigation measures which addressed radiological health and safety.

⁶ An alternative design measure not explicitly mentioned is the placement of all of the canisters underground, as PG&E itself has proposed to do at its ISFSI for the Humboldt Bay Nuclear Power Plant.

implementing them under the circumstances. Two scenarios which the authors of the EIR considered feasible were the use of a wire-guided anti-tank missile from a boat off-shore from the plant and an impact by an explosive-laden smaller aircraft.⁷

The exclusion zones for vessels seaward of DCPD was recognized, but also taken into account were the range of such missiles and the broad dispersion to "countries of less than stellar records when it comes to political stability, corruption and security." EIR at 3-249. Also considered were the difficulty in aiming such a missile from a boat and the lack of information about whether such a missile would be effective enough to result in the release of radioactive material. Nevertheless, such an attack was considered plausible enough and its consequences significant enough to warrant consideration. No additional mitigation measures beyond those already proposed in connection with an attack by airplane were identified. EIR at 3-245 to 3-246.

Once again, the County is not suggesting that the NRC should have reached this same conclusion. Rather, had the NRC considered this scenario, and had the NRC made provisions for hearing classified information, it may have learned that such a wire-guided missile is incapable of penetrating an ISFSI

⁷ Recognizing the uncertainty regarding attack by large aircraft, the Germans have also considered attacks by helicopters loaded with explosives. There are no anti-aircraft installations around nuclear power plants.

storage cask, so that this scenario would not need to be considered. Having failed to do this, the NRC has left the County's citizens wondering whether it has taken all reasonable steps to deal with the threat of terrorism. More importantly, the consequence of the NRC's illegal refusal to consider alternatives under NEPA is that the NRC will make its decision without the benefit of the best available information and, thus, may not take the most appropriate actions to protect the County and its citizens from the environmental impacts of an attack on an ISFSI.

II. The Commission Improperly Focused On Quantifying The Risk Of Terrorist Attack

The NRC relied heavily on the non-quantifiability of the risk of terrorist attack to justify its refusal to consider the environmental impacts of such an attack for the purposes of NEPA. It is not necessary to quantify the risks of a terrorist attack on an ISFSI in order to meaningfully consider alternatives and other measures that would mitigate the environmental consequences of such an attack. *PFS*, 58 N.R.C. at 350-51. Indeed, the Commission adopted and the Supreme Court sustained the final rule, known as Table S-3, 44 Fed. Reg. 45362 (1979), as a means of generically complying with NEPA despite acknowledging unquantified uncertainties in its underlying assumptions. *Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc., Inc.*, 462 U.S. 87, 98 (1983) (“BG&E”).

Even where the risk of a terrorist attack on an ISFSI cannot be quantified, this has not prevented the NRC from requiring licensees to implement security measures to protect an ISFSI from attack. Quantifiability of the risk has not been the necessary basis for the NRC’s imposition of additional security measures as a response to the terrorist attack on September 11, 2001. This clearly shows that a risk need not be quantifiable for it to be tangible and to require that specific actions be taken to limit that risk.

NEPA requires the NRC to consider environmental impacts which are not remote and speculative. *Limerick Ecology Action, Inc. v. United States Nuclear Regulatory Com.*, 869 F.2d 719, 739 (3d Cir. 1989). The NRC's security measures for ISFSIs show that the NRC does not consider terrorist attacks on them to be remote and speculative. Accordingly, the possibility that environmental impacts may result from such attacks also cannot be considered to be remote and speculative.

Recognizing this, the County's citizens and its elected representatives proffered contentions regarding the inadequacy of the ER prepared by PG&E. The County did not request the NRC to conduct a "crystal ball" inquiry but simply requested it to consider the reasonable alternative consequences of such an attack on the new potential terrorist target that would be licensed by the NRC. *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827 (D.C.Cir. 1972). In particular, the County contended that the consideration of alternative sites was incomplete for the purposes of NEPA.⁸ The County believes that a consideration of alternative sites is necessary to accurately determine whether the

⁸ The County also noted that by not considering alternative security plans and mitigating measures, the cost-benefit analysis was incomplete because it did not include: (1) a comparison of the security costs which would be borne by the County under alternative security plans; and (2) the costs resulting from the environmental impacts that could be experienced by the County and its citizens as a result of security plan failures.

environmental impacts of a terrorist attack on the ISFSI and the costs of security measures could be mitigated. This evaluation does not require quantification of the risk of a terrorist attack but can be performed by assuming a realistic release of radioactive material as a result of a terrorist attack, as the NRC currently does for other accidents, and then exploring the environmental impacts of that release as a function of alternative sites. Accordingly, the NRC's reliance on the non-quantifiability of the risk of terrorist attack is inconsistent with the NRC's obligation to take a "hard look" at the proposal and alternatives to it. *Marble Mountain Audubon Soc'y v. Rice*, 914 F.2d 179 (9th Cir. 1990).

III. The Commission Improperly Found That The Environmental Impacts Of A Terrorist Attack Are A Worst Case Scenario

The Commission improperly applied well-established NEPA law to determine that the consideration of environmental impacts of a terrorist attack on an ISFISI would constitute an excludable worst-case analysis. *PFS*, 56 N.R.C. at 351-54. This is incorrect. NEPA requires the NRC to consider reasonably foreseeable environmental impacts. *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992). Since events of September 11, 2001, the environmental impacts from a possible terrorist attack on an ISFSI must be considered reasonably foreseeable and cannot reasonably be characterized as a worst-case analysis. A worst-case analysis, under the now-superseded guidelines promulgated by the Council on Environmental Quality ("CEQ"), required the consideration of remote, catastrophic impact events for which uncertain adverse impacts were assumed to occur. *Save Our Ecosystems v. Clark*, 747 F.2d 1240 (9th Cir. 1984).

Unfortunately, a terrorist attack can no longer be considered remote nor can its impacts be assumed to be uncertain. Accordingly, the Commission wrongfully denied the County and its citizens a hearing on the basis of an incorrect finding that the environmental impacts of a terrorist attack are a worst-case scenario that need not be considered under NEPA.

IV. The Commission Improperly Determined That Security Concerns Could Not Be Considered In A Public Forum

Perhaps the most unsupportable NRC reason for refusing to consider the security contentions raised by the County and SLOMFP is the Commission's statement that "NEPA's public process is not an appropriate forum for considering sensitive security issues." *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-03-01, 57 N.R.C. 7 (January 23, 2003). This belief was supported by claiming that "NEPA does not override [our] concern for making sure that sensitive security-related information ends up in as few hands as practicable." *PFS*, 56 N.R.C. at 347. Security concerns do not override the NRC's obligation to comply with NEPA, *Weinberger v. Catholic Action of Hawaii/Peace Education Project*, 454 U.S. 139, 144 (1981) ("*Weinberger*"), and NRC practice shows that hearings can be held on NEPA issues consistent with the need for secrecy.

NEPA ensures that an agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning environmental impacts. It also guarantees that the relevant information will be made available to the larger audience that may play a role in both the decisionmaking process and the implementation of that decision. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). Thus, NEPA is intended to assure the public

that the NRC has indeed considered environmental concerns in its decision making process. *BG&E, supra*, 462 U.S. at 97. . .

Contrary to the Commission's views, NEPA's public process is the quintessentially appropriate forum for considering the potential environmental impacts of terrorist attacks and the alternatives to mitigate those impacts. This is especially so here because the success of a security plan is measured not only by its ability to provide security, but also by its ability to reassure the public by giving it confidence that the new federally licensed facility is safe. To the extent that the County shares in that confidence-building role, it has been foreclosed from performing its role by being denied an opportunity to participate in a hearing on behalf of the County's citizens.⁹

The NRC's conclusion regarding the inappropriateness of NEPA as a forum for considering these environmental issues is based on its earlier decision in *PFS*. A review of the *PFS* analysis shows it is not a legally supportable reasoned decision. The Commission justified its position by stating:

Although we conclude in the previous discussion that there is no basis on which to provide a reasonable measure of the risk of terrorism and that the risk of terrorism is far afield from issues

⁹ An opportunity to comment on the NRC's Environmental Assessment ("EA") was not a meaningful substitute because the EA did not include a discussion of alternatives, commenting does not provide a meaningful substitute for the in-depth evaluation that would have resulted from a hearing, and, the Commission consistently excluded consideration of the issue.

involving the natural environment of the facility, the Commission is presently engaged in analyzing how to keep such risk at a minimum. Part of this effort is to protect sensitive information from falling into the hands of those with malevolent intention. The public aspect of NEPA processes conflicts with the need to protect certain sensitive information. NEPA requires agencies to include the public in NEPA reviews. Indeed, public information and public participation form a large part of NEPA *raison d'être*. At the NRC, public input includes not just an opportunity to comment on draft EIS's, but also an opportunity to contest environmental findings at agency hearings on the licensing action in question.

In our view, the public interest would not be served by inquiries at NRC hearings and public meetings into where and how nuclear facilities are vulnerable, how they are protected and secured, and what consequences would ensue if security measures failed at a particular facility. Such NEPA reviews may well have the perverse effect of assisting terrorists seeking effective means to cause a release of radioactivity with potential health and safety consequences.

PFS, 56 N.R.C. at 354 (footnotes omitted).

To see how the public interest could be served without assisting terrorists, contrary to the NRC's claims, it is sufficient to review the consideration of security issues in the County EIR. Five alternative on-site locations were considered for the ISFSI. EIR 4- to 4-9. Safety, including the threat of a terrorist attack, was among the decision criteria applied to choose from among the alternative sites. EIR at 4-16. The analysis of the terrorist threat was not complicated nor did it involve classified information. Consideration was simply given to the off-site visibility of the ISFSI at each of the locations to determine which of them provided a clear line of sight for would be terrorists. Four of the

five locations were found to present the possibility of increased impact on safety as a result of clear lines of sight to the ISFSI. EIR at 3-249.

This experience shows that the threat of a terrorist attack can be addressed under NEPA in public. It also shows that even a simplified analysis of the threat can add meaningfully to the choice of a site from among the possible alternatives. As before, the County is not suggesting that this analysis should have been conducted by the NRC. The County expects that had the NRC conducted such an analysis, it would have been far more sophisticated and might have involved some non-public elements. The County is simply saying that the NRC could have meaningfully factored the impacts of such attacks into its review of the available alternatives and mitigation measures.

As for the Commission's concern about preventing sensitive information from falling into the hands of persons with malevolent intentions, the NRC has successfully addressed that concern when litigating security plans for nuclear power plants. Indeed, the physical security plan for Diablo Canyon was the subject of challenge. *Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Unit Nos. 1 & 2)*, CLI-80-24, 11 N.R.C. 775, 777 (1980). The NRC has essentially ignored its precedent to state, without explanation, that no protective measures would be adequate, although agencies are required to consider the

environmental consequences of their decisions even where those considerations cannot be made public for security reasons.

In the past, the NRC has used protective orders to prevent sensitive information from becoming public. See, *Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-600, 12 N.R.C. 3 (1980). NRC adjudicatory boards assume that protective orders will be obeyed unless a concrete showing to the contrary is made. *Consumers Power Co.* (Midland Plant, Units 1 & 2), ALAB-764, 19 N.R.C. 633, 643, n.14 (1984). No one could seriously believe that the County would fail to comply with any protective order. Moreover, the County already has responsibilities as an off-site responder in PG&E's Security Plan, and therefore it is already privy to some sensitive Security Plan-related information. Finally, certain issues could be reviewed *in camera* before an audience limited to those with a "need to know."

Rather than follow its own precedent, the NRC chose an unsophisticated approach to protecting security-related information.

NEPA does not override the AEC's (and our) concern for making sure that sensitive security-related information ends up in as few hands as practicable. NEPA itself includes limiting provisions. Section 101(b) of NEPA requires agencies to implement the statute's policies using "all *practicable* means, consistent with *other essential considerations of national policy*." Another passage in the same section provides that the federal government's efforts to "attain the widest range of beneficial uses of the environment" are subject to restraints based on "risks to health and safety, or other undesirable consequences." These provisions caution against using the NEPA

process for a terrorism review. A full-scale NEPA process inevitably would require examination not only of how terrorists could cause maximum damage but also how they might be thwarted. But keeping those kinds of information secret is vital. To use NEPA's own terms, confidentiality in this area is an "essential consideration of national policy," protects against "risks to health and safety," and avoids "undesirable and unintended consequences." *PFS*, 56 N.R.C. at 355. (footnotes omitted) (emphasis in original)

There is no doubt that security interests must be accommodated in the NEPA process. But the Commission's reliance on those interests to refuse to consider environmental impacts, instead of using alternatives to implement its NEPA responsibilities to the maximum extent possible under the circumstances, is contrary to NEPA requirements. *Weinberger, supra*, 454 U.S. at 143.¹⁰

Finally, the NRC attempted to argue that it has no choice under the Atomic Energy Act of 1954, as amended, ("AEA"), specifically 42 U.S.C. § 2167, but to preclude consideration of the environmental impacts of a terrorist attack in an ISFSI licensing proceeding.

For the NRC, protecting safeguards information is not simply a policy choice. It is *required* by law. Section 147 of the AEA provides that the NRC "shall" prohibit unauthorized disclosures of key security-related information. Consequently, the NRC cannot

¹⁰ The Commission recognized this precedent but dismissed it by stating that "a formal NEPA review, secret or otherwise, would not add meaningfully to our understanding of the terrorism issue." *PFS*, 56 NRC at 356. Thus, contrary to the bedrock principles of NEPA, the Commission has determined that it knows it all and that the public has nothing to contribute, even when the public is a knowledgeable County government responsible for the health and welfare of its citizens.

make publicly available the kind of information necessary for more than a superficial NEPA review. This limitation on information availability supports our decision not to use NEPA, in part a public information statute, as our vehicle to analyze terrorism.

And widespread NEPA terrorism reviews, even if we attempted to keep EISs and hearings confidential, increase the risk of dangerous security breaches.

PFS, 56 N.R.C. at 355-56 (footnotes omitted).

Here, again, the NRC ignores prior precedent. The prohibition against unauthorized dissemination does not prevent the NRC from making authorized disclosures to individuals who satisfy the NRC's criteria for the disclosure of such security-related information. The County's counsel and expert witnesses could be authorized by the NRC to obtain the information necessary for meaningful participation in a NEPA consideration of alternatives and mitigation measures. A conclusory, unsupported statement that confidentiality will not work simply does not provide a reasoned basis for excluding all consideration of environmental alternatives, especially when it involves the County, which is intimately involved in response plans for security events.

Moreover, contrary to the NRC's characterization, NEPA is not being proposed as a vehicle to analyze terrorism. It is being proposed as a vehicle to do what NEPA requires the NRC to do, consider alternatives that could mitigate the environmental impacts of terrorism. As discussed above, security information is not required for that activity.


CONCLUSION

By refusing to consider the environmental issues raised by the County and its citizens, the NRC has created the possibility that the County will bear all the risks and burdens of NRC errors in judgment, without any opportunity to have its concerns addressed meaningfully. Accordingly, for all of the foregoing reasons, the NRC's refusal to admit the NEPA contentions proffered by SLOMFP and the County must be reversed, the NRC must be directed to conduct a hearing on those contentions, the NRC must be directed to permit interested governmental entities, including the County, to participate in that hearing, and the Court should also grant such other relief as it determines is warranted.

Dated: March 22, 2004

Respectfully submitted,

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APPENDIX

Excerpts from Diablo Canyon Independent Spent Fuel Storage Installation (ISFSI), Final Environmental Impact Report, Prepared for County of San Luis Obispo Department of Planning and Building by Marine Research Specialists (MRS), 3140 Telegraph Road, Suite A, Ventura, California and certified pursuant to the California Public Resources Code, § 21151 on February 26, 2004.

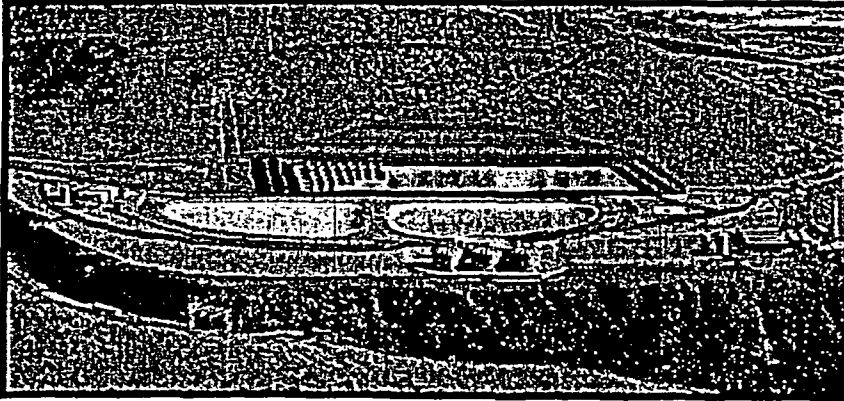
Appendix Contents

Diablo Canyon Independent Spent Fuel Storage Installation (ISFSI) Final Environmental Impact Report Cover Page.

Diablo Canyon Independent Spent Fuel Storage Installation (ISFSI) Final Environmental Impact Report, Section 3.11, System Safety/Risk of Upset, pp. 3-236 – 3-239; 3-248 – 3-253.



Diablo Canyon Independent Spent Fuel Storage Installation (ISFSI) Final Environmental Impact Report



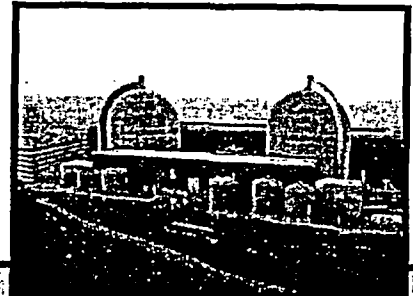
Prepared for:

County of San Luis Obispo
Department of Planning and Building
County Government Center
San Luis Obispo, CA
93408

Prepared by:

Marine Research Specialists (MRS)
3140 Telegraph Road, Suite A
Ventura, California
93003

January 2004



SCH # 2002031155

Impact	Impact Description	Impact Classification
SS.4	A willful aircraft strike resulting from terrorism and/or malicious intent could result in damage to the cask with a subsequent release of radioactive material.	Class II

Subsequent to the events of 11 September 2001 the NRC and commercial nuclear industry have implemented a variety of measures aimed at reducing the likelihood of a successful terrorist attack on nuclear facilities. Within hours of the September 11th attacks, the NRC issued a series of classified, security-related advisories to power reactor licensees which were above and beyond current regulatory requirements. These security enhancements were later formalized in an order issued on February 25, 2002. The order imposed Interim Compensatory Measures (ICMs) covering a wide variety of issues. PG&E implemented the ICMs by August 31, 2002.

Prior to the events of 11 September 2001, the prospect of an airborne terrorist attack on the DCPD ISFSI would have been considered highly speculative under CEQA and dropped from further analysis. While it would be nearly impossible to estimate the probability of an aircraft-based terrorist attack on the DCPD ISFSI, much less the likelihood of a successful attack and storage cask containment breach, the possibility of such an attack cannot be totally discounted.

The proposed ISFSI location is located on a hillside above the DCPD reactors and is clearly visible from aircraft flying along the coast. Recent over flights by the California Coastal Records Project taken on 2 September 2002 clearly show how close an aircraft can approach DCPD, even under post September 11th security conditions (see <http://www.californiacoastline.org/cgi-bin/image.cgi?image=2204&mode=sequential&flags=0>; permission to reproduce this image was denied due to concerns over potential future flight restrictions). In addition, regular aerial photography is conducted by various commercial companies, such as Pacific Aerial Surveys (see Figure 3.11-1).

Given the clear exposure of the ISFSI to aircraft flying over the ocean, it is clear that an intentional aircraft strike is possible. To illustrate the potential vulnerability of the ISFSI to a low-flying, fast approaching aircraft, a three-dimensional simulation of the facility was conducted. While the entire simulation cannot be shown within this document, individual segments are shown in Figure 3.11-2. Regardless of the visibility of the proposed DCPD ISFSI, striking the facility with a large aircraft would be a difficult task as noted in a study conducted by the Electric Power Research Institute (EPRI 2002). Figure 3.11-3 shows the relative size of past terrorist targets and nuclear reactor containment and storage facilities.

While the possibility of an intentional aircraft attack appears to be feasible, there is a lack of consensus on the robustness of the storage casks to withstand an aircraft impact. A study conducted by the EPRI (2002) indicates that the storage cask would be capable of withstanding a direct strike by a Boeing 767-400 aircraft, thus minimizing the threat associated with terrorist aircraft strikes. However, a dissenting publication, *Robust Storage of Spent Nuclear Fuel, A Neglected Issue of Homeland Security* (Thompson 2002), opines that a direct aircraft attack on an ISFSI would result in a breach of containment and a substantial release of radioactive material. It should be noted that neither study contains detail sufficient to independently evaluate the merit of the report conclusions.

Figure 3.11-1 Aerial Photograph of DCP



Figure 3.11-2 Time Lapse of Simulated Aircraft Strike on the DCPD ISFSI



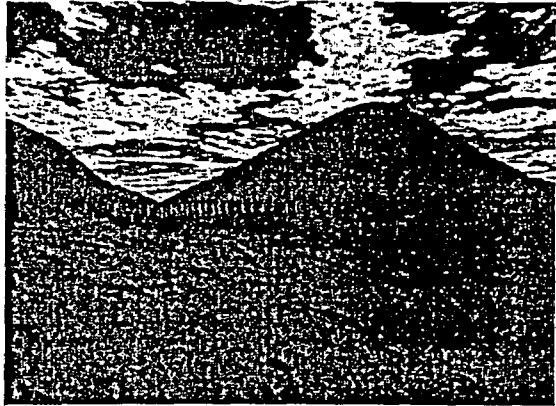
Time 1



Time 4



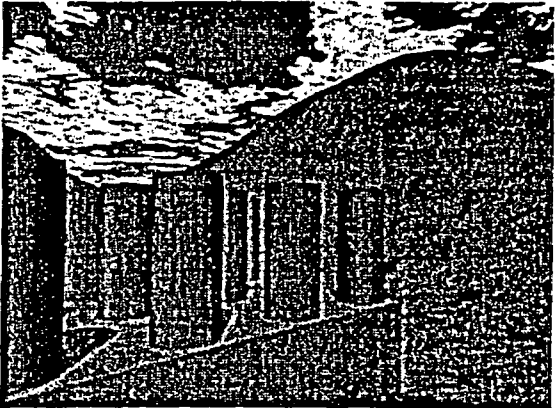
Time 2



Time 5

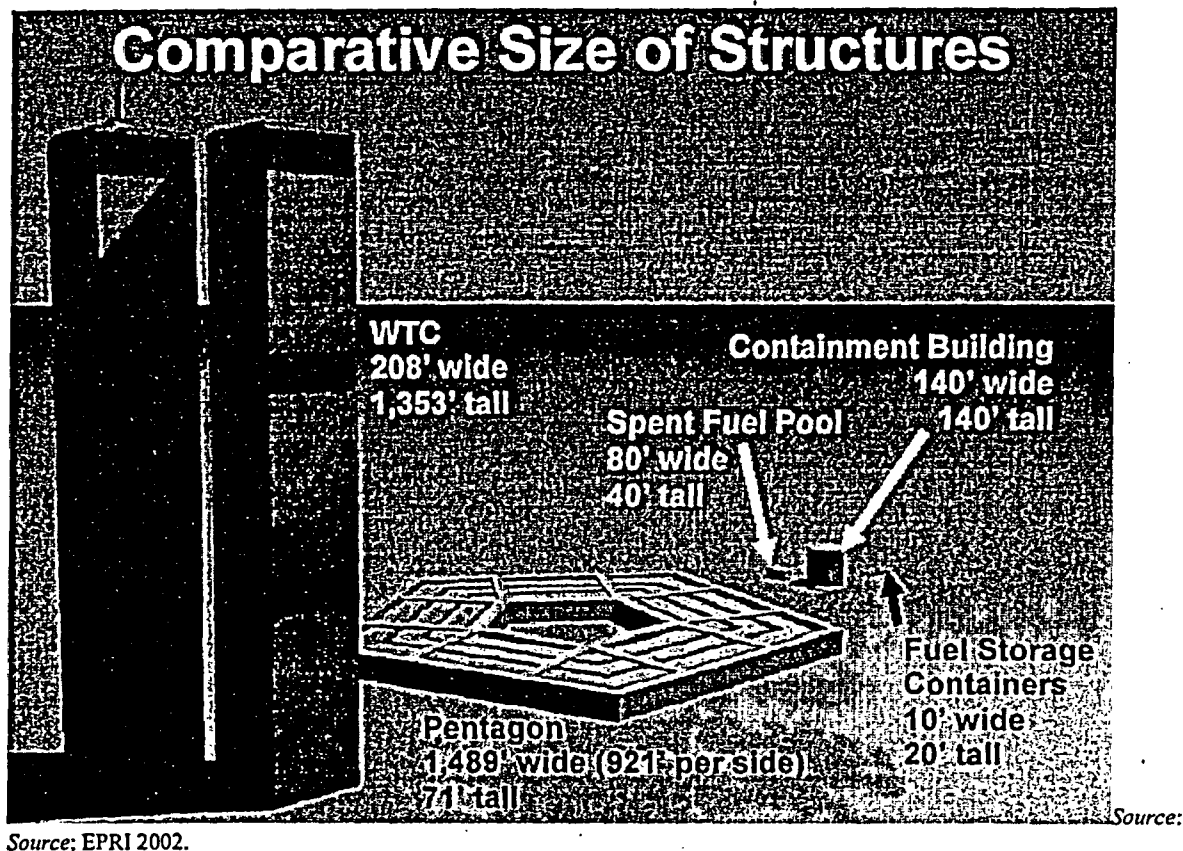


Time 3



Time 6

Figure 3.11-3 Comparative Size of ISFSI to Other Structures Subject to Terrorist Attack

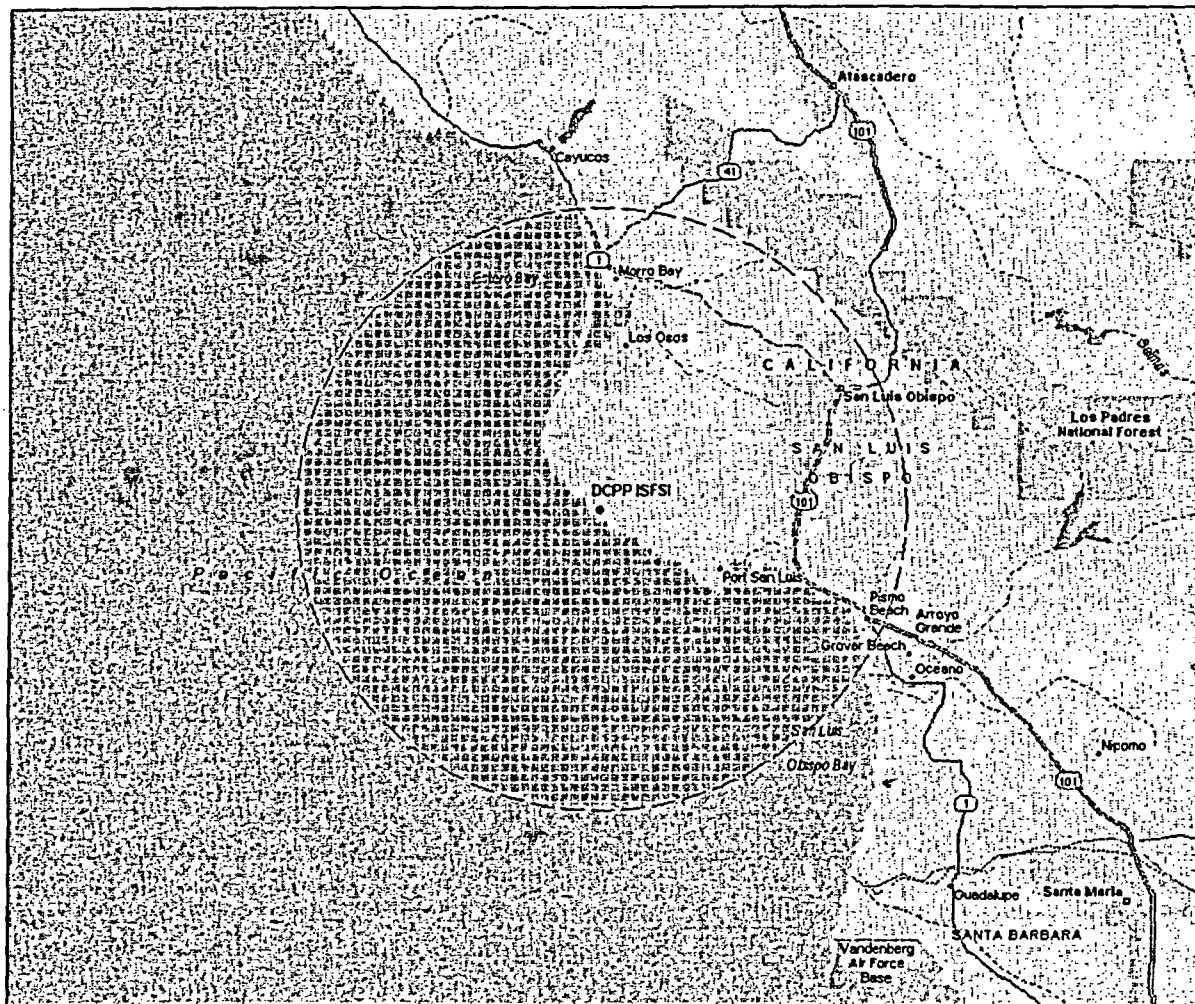


In another study, the Navy, in conjunction with Department of the Army munitions experts, reviewed the potential effects of a terrorist attack on a spent fuel cask (NSC 1998). That review, based on Army weapons testing, concluded that the consequences of such an attack would likely be negligible. Even if penetration did occur, the container would not explode. Any penetration created would be small, and the amount of radioactivity released, if any, would also be small.

Depending on the level of success of a potential terrorist aircraft attack and the severity of damage to the cask, potential consequences could range from no additional release of radiation above those levels described in previous impact discussions above, to a complete loss of containment. Under this scenario, Thompson (2002) hypothesizes a breach of a HI-STORM 100 dry storage cask and subsequent zirconium cladding fire, and estimates that an area of approximately 2,000 square kilometers (770 square miles) would become uninhabitable due to Cesium-137 contamination (2,000 square kilometers represents an area of approximately 28 by 28 miles square). In this case, uninhabitable is defined by Thompson (2002) as a whole body dose of 10 rem over 30 years, which corresponds to an average dose rate of 0.33 rem per year. Thompson (2002) assumed in his analysis the failure of one dry storage cask with a resultant fire.

Figure 3.11-4 shows the relative size of hazard zone that could become inhabitable in the event of failure of a cask and resultant fire as determined by Thompson (2002). However, it should be noted that offshore winds would result in little or no impact to the habitability of onshore areas,

Figure 3.11-8 Areas Vulnerable to Radiological Consequences Greater than 25 rem – Scenario 2



Impact	Impact Description	Impact Classification
SS.5	An act of terrorism and/or malicious intent could result in damage to the cask with a subsequent release of radioactive material.	Class II

Thompson (2002) identifies a wide variety of scenarios where the ISFSI would be vulnerable to terrorist attack. Aside from the commercial aircraft attack scenario, as discussed in the previous impact, the potential for other terrorist actions cannot be completely dismissed. The attack modes identified by Thompson include:

- Commando-style attack
- Land-vehicle bomb

- Anti-tank missile
- Commercial Aircraft
- Explosive-laden smaller aircraft
- 10-kilotonne nuclear weapon.

Given the relatively remote location and safety measures currently in place, attack via commando-style attack and land-vehicle bomb can probably be dismissed given the large distance that terrorists would have to travel undetected to reach the ISFSI site. While we were not able to review the DCPD Site Security Plan, casual observations while at the site would indicate that ground-based security at DCPD is substantial, with redundant safety measures in place to deter sequential attacks.

An attack using a 10-kilotonne nuclear weapon also seems highly speculative and unlikely given the difficulty of delivering such a weapon to the site, and is thus also dismissed from this analysis. It is also highly unlikely that a terrorist group, should they be able to obtain a nuclear weapon, would use it in a relatively sparse population location when many much more attractive targets exist. This would leave potential attack via anti-tank missile and explosive-laden smaller aircraft as the only other possible vulnerabilities identified by Thompson.

There is currently a one-mile exclusion zone for vessels seaward of DCPD to protect against potential terrorist attack. However, the proposed ISFSI site would still be visible from the ocean at a distance of one mile and clearly vulnerable to attack. While there is clearly not a history of terrorist attack using anti-tank missiles in the United States, the weaponry and opportunity exist. The U.S. Developed tube-launched, optically-tracked, wire-guided (TOW) anti-tank missile has been sold to a variety of countries with less than stellar records when it comes to political stability, corruption and security (Columbia, Iran, Lebanon, Pakistan, Somalia, Yugoslavia and South Yemen are mentioned by Thompson). Similarly, the MILAN (Missile d'Infanterie Leger Antichar) is a portable medium range class, anti-tank weapon manufactured by Euromissile that has been distributed worldwide³. Similar to the TOW, the MILAN is wire guided with a range of more than one mile. The MILAN has been sold to more than 41 countries including those listed above. There are also several other anti-armor missiles that have been produced by numerous eastern European and Asian countries. While there are no studies evaluating the effectiveness of a TOW or MILAN missile in penetrating a spent fuel rod storage cask, it is likely that the effectiveness would be adequate to result in the release of radioactive material.

While a potential sea-based terrorist attack is feasible, the likelihood of success at the DCPD ISFSI is doubtful. From most angles, the ISFSI would be at least partially obscured from view by either the natural terrain or the reactor containment buildings. Simulated sea level views of the ISFSI from the south, southwest and west are provided in Figures 3.11-8 through 3.11-10, respectively. In addition, to the poor visibility of the ISFSI from the sea surface, it would be exceedingly difficult to maintain missile optical tracking from a vessel given the relatively rough average sea surface conditions offshore of Diablo Canyon and frequency of poor visibility conditions. The combined requirement of smooth seas and good visibility would substantially limit the opportunity for a successful terrorist missile attack, while also exposing terrorist to potential detection.

³ British Armed Forces – The Defence Suppliers Directory. <http://www.armedforces.co.uk/>

Figure 3.11-8 Simulated Offshore View of the DCPD ISFSI from the South



Figure 3.11-9 Simulated Offshore View of the DCPD ISFSI from the Southwest



Figure 3.11-10 Simulated Offshore View of the DCPD ISFSI from the West

However, as noted in the discussion of Impact SS.4, the consequence of such an attack would be substantial. Therefore, impacts associated with a terrorist attack on the proposed ISFSI are considered potentially significant.

Mitigation Measures

Given the poor visibility of the ISFSI from sea level and the difficulties that would be involved in successfully completing a sea-based terrorist attack, no additional mitigation measures have been identified or are required beyond the measures that have been identified above (SS-2 and through SS-6). Mitigation Measures SS-2 through SS-6 would be considered sufficient to reduce potential impacts to less than significant.

Residual Impacts

The residual system safety impact would be *insignificant with mitigation* (Class II).

3.11.5 Mitigation Monitoring Plan

Mitigation Measure	Plan Requirements and Timing	Method of Verification	Timing of Verification	Party Responsible For Verification
SS-1	The Applicant shall work with the NRC, Transportation Security Administration (TSA) and FAA to develop a "No Flight Zone" above and around the PG&E Diablo Canyon Facility. All existing flight corridors already avoid direct overflights; however, currently local small aircraft can fly freely over and around the DCCP. Using the United Kingdom's guidance for nuclear facilities as a guide, the No Flight Zone should comprise an area with a two mile radius and a height of at least 2,000 feet above ground level.	Review and approval of No Flight Zone.	Prior to ISFSI operations and spent fuel transfer.	NRC, TSA and FAA
SS-2	The ISFSI shall be designed to withstand the impact of commercial and general aviation aircraft or other projectiles such that it would prevent a breach of the MPC. The design could be achieved through a combination of robust cask design (e.g., all metal design) and/or external ISFSI armoring such as a bunker or protective barrier.	Review and approval of design.	Prior to final land use clearance.	NRC
SS-3	The ISFSI storage pad shall be designed to divert fluids, such as flammable aviation fuels, away from the storage casks to minimize potential fire impacts on the storage casks.	Review and approval of design.	Prior to final land use clearance.	NRC
SS-4	The ISFSI shall be equipped with a fire suppression system capable of maintaining the cask MPC at a safe temperature and pressure under a worst-case fire scenario, such as a fully fuel-laden commercial aircraft strike. The fire suppression system shall include hydrants and monitors that are dedicated to fire suppression at the ISFSI. The fire suppression system shall also include fire detection and alarm systems.	Review and approval of design.	Prior to final land use clearance.	NRC
SS-5	The area surrounding the ISFSI shall be re-vegetated following construction. A vegetation management plan shall be developed and implemented to protect the site against wildfire.	Review and approval of plan.	Prior to final land use clearance.	CDF/San Luis Obispo County Fire Department
SS-6	The existing DCCP emergency response plan (ERP) shall be amended to include specific response information and measures for the ISFSI facility. The ISFSI ERP shall include the following elements: <ol style="list-style-type: none"> 1. Identification of a range of potential releases and associated Emergency Planning Zones that would be affected. 2. Plan and implementation of radiation monitoring to detect a release and track plume dispersion and dosage. 3. Criteria for short-term response and long-term protective actions. 	Review and approval of design.	Prior to final land use clearance.	NRC, CA OES, SLO County

Mitigation Measure	Plan Requirements and Timing	Method of Verification	Timing of Verification	Party Responsible For Verification
	<p>4. Clear hierarchy for coordination with State and local emergence response agencies.</p> <p>5. Communication plan to provide rapid flow of information to all responders, including State and local emergence response agencies. Reevaluate the existing emergency communication system. The Communication Plan shall also include redundant methods of communication should primary systems fail during an emergency.</p> <p>6. Detailed medical response plans and procedures, with necessary medical equipment in place prior to operation.</p> <p>7. Procedures for facility drills, regional exercises and emergency responder training. Identify and implement specialized training needs and requirements for all scenarios associated with spent fuel handling operations associated with the ISFSI project.</p> <p>8. Reevaluate the current emergency response plans for Port San Luis and Avila Beach given the close proximity and higher likelihood that prevailing wind conditions would rapidly result in unacceptable radiological consequences in the area. The reevaluation should take into consideration the recommendations from the Port San Luis-commissioned study entitled "Diablo Canyon Nuclear Power Plant Emergency Response Plan Evaluation" as they apply to the proposed project.</p> <p>9. Response time studies of the onsite DCPD Fire Brigade and CDF/San Luis Obispo County Fire Department. The ERP shall insure that response times meet or exceed the requirements of NFPA 1710.</p> <p>10. Evaluate the need for specialized equipment that would be necessary for responding to ISFSI accidents and incidents. Identify and procure necessary onsite and offsite equipment for ISFSI emergency response.</p> <p>11. A public education program.</p>			

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SAN LUIS OBISPO MOTHERS FOR PEACE, et al.

Petitioners-Appellants

v.

U.S. NUCLEAR REGULATORY COMMISISON,

Defendants-Appellees,

PACIFIC GAS AND ELECTRIC COMPANY, et al.

Intervenors

STATEMENT OF RELATED CASES

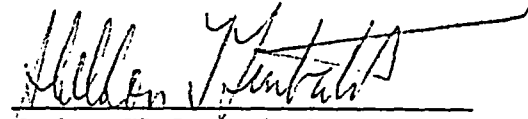
The following related cases are pending before the United States Court of Appeal for the Ninth Circuit:

*California Public Utilities Commission, et al. v. U.S. Nuclear
Regulatory Comm'n*, Docket No. 02-72735 (filed August 25, 2002)

In re Pacific Gas and Electric Co., Docket No. 02-16990
(filed September 30, 2002)

Dated this 22 day of March, 2004

James B. Lindholm, Esq.
Timothy McNulty, Esq.
Office of the County Counsel
County of San Luis Obispo


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ADDENDUM OF PERTINENT STATUTES AND REGULATIONS

UNITED STATES CODE (U.S.C.)

42 U.S.C. § 2167. Safeguards information

(a) Confidentiality of certain types of information; issuance of regulations and orders; considerations for exercise of Commission's authority; disclosure of routes and quantities of shipment; civil penalties; withholding of information from Congressional committees

In addition to any other authority or requirement regarding protection from disclosure of information, and subject to subsection (b)(3) of section 552 of title 5, the Commission shall prescribe such regulations, after notice and opportunity for public comment, or issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information which specifically identifies a licensee's or applicant's detailed -

(1) control and accounting procedures or security measures (including security plans, procedures, and equipment) for the physical protection of special nuclear material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security;

(2) security measures (including security plans, procedures, and equipment) for the physical protection of source material or byproduct material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security; or

(3) security measures (including security plans, procedures, and equipment) for the physical protection of and the location of certain plant equipment vital to the safety of production or utilization facilities involving nuclear materials covered by paragraphs (1) and (2) (FOOTNOTE 1)

(FOOTNOTE 1) So in original. Probably should be followed by a semicolon.

if the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility. The Commission shall exercise the authority of this subsection -

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security, and

(B) upon a determination that the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility.

Nothing in this chapter shall authorize the Commission to prohibit the public disclosure of information pertaining to the routes and quantities of shipments of source material, by-product material, high level nuclear waste, or irradiated nuclear reactor fuel. Any person, whether or not a licensee of the Commission, who violates any regulation adopted under this section shall be subject to the civil monetary penalties of section 2282 of this title. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized committees of the Congress.

(b) Regulations or orders issued under this section and section 2201(b) of this title for purposes of section 2273 of this title

For the purposes of section 2273 of this title, any regulations or orders prescribed or issued by the Commission under this section shall also be deemed to be prescribed or issued under section 2201(b) of this title.

(c) Judicial review

Any determination by the Commission concerning the applicability of this section shall be subject to judicial review pursuant to subsection (a)(4)(B) of section 552 of title 5.

(d) Reports to Congress; contents

Upon prescribing or issuing any regulation or order under subsection (a) of this section, the Commission shall submit to Congress a report that:

(1) specifically identifies the type of information the Commission intends to protect from disclosure under the regulation or order;

(2) specifically states the Commission's justification for determining that unauthorized disclosure of the information to be protected from disclosure under the regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility, as specified under subsection (a) of this section; and

(3) provides justification, including proposed alternative regulations or orders, that the regulation or order applies only the minimum restrictions needed to protect the health and safety of the public or the common defense and security.

42 U.S.C. § 4321, et seq.

National Environmental Policy

Sec. 4321. Congressional declaration of purpose

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

CODE OF FEDERAL REGULATIONS (C.F.R.)

10 C.F.R. Part 72, Subpart H

10 C.F.R. § 72.180: Physical protection plan.

The licensee shall establish, maintain, and follow a detailed plan for physical protection as described in § 73.51 of this chapter. The licensee shall retain a copy of the current plan as a record until the Commission terminates the license for which the procedures were developed and, if any portion of the plan is superseded, retain the superseded material for 3 years after each change or until termination of the license. The plan must describe how the applicant will meet the requirements of § 73.51 of this chapter and provide physical protection during on-site transportation to and from the proposed ISFSI or MRS and include within the plan the design for physical protection, the licensee's safeguards contingency plan, and the security organization personnel training and qualification plan. The plan must list tests, inspections, audits, and other means to be used to demonstrate compliance with such requirements.

10 C.F.R. § 72.182: Design for physical protection.

The design for physical protection must show the site layout and the design features provided to protect the ISFSI or MRS from sabotage. It must include:

- (a) The design criteria for the physical protection of the proposed ISFSI or MRS;
- (b) The design bases and the relation of the design bases to the design criteria submitted pursuant to paragraph (a) of this section; and
- (c) Information relative to materials of construction, equipment, general arrangement, and proposed quality assurance program sufficient to provide reasonable assurance that the final security system will conform to the design bases for the principal design criteria submitted pursuant to paragraph (a) of this section.

10 C.F.R. § 72.184: Safeguards contingency plan.

- (a) The requirements of the licensee's safeguards contingency plan for responding to threats and radiological sabotage must be as defined in appendix C to part 73 of this chapter. This plan must include Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix, the first four categories of information relating to nuclear facilities licensed under part 50 of this chapter. (The fifth and last category of information, Procedures, does not have to be submitted for approval.)
- (b) The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with appendix C to 10 CFR part 73 for effecting the actions and decisions contained in the Responsibility Matrix of the licensee's safeguards contingency plan. The licensee shall retain a copy of the current procedures as a record until the Commission terminates the license for which the procedures were developed and, if any portion of the procedures is superseded, retain the superseded material for three years after each change.

10 C.F.R. § 72.186: Change to physical security and safeguards contingency plans.

(a) The licensee shall make no change that would decrease the safeguards effectiveness of the physical security plan, guard training plan or the first four categories of information (Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix) contained in the licensee safeguards contingency plan without prior approval of the Commission. A licensee desiring to make a change must submit an application for a license amendment pursuant to § 72.56.

(b) The licensee may, without prior Commission approval, make changes to the physical security plan, guard training plan, or the safeguards contingency plan, if the changes do not decrease the safeguards effectiveness of these plans. The licensee shall maintain records of changes to any such plan made without prior approval for a period of three years from the date of the change, and shall, within two months after the change is made, submit a report addressed to Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, in accordance with § 72.4, containing a description of each change. A copy of the report must be sent to the Regional Administrator of the appropriate NRC Regional Office specified in appendix A to part 73 of this chapter.

CERTIFICATE OF COMPLIANCE PURSUANT TO
FED.R.APP. 32(a)(7)(C) AND CIRCUIT RULE 32-1

Form 8. Certificate of Compliance Pursuant to Fed.R.App. 32(a)(7)(C) and Circuit Rule 32-1 for Case Number 03-74628.

(see next page) Form Must Be Signed By Attorney or Unrepresented Litigant *And Attached to the Back of Each Copy of the Brief*

I certify that: (check appropriate option(s))

 1. Pursuant to Fed. R. App. P. 32 (a)(7)(C) and Ninth Circuit Rule 32-1, the attached opening/answering/reply/cross-appeal brief is

- Proportionately spaced, has a typeface of 14 points or more and contains _____ words (opening, answering, and the second and third briefs filed in cross-appeals must not exceed 14,000 words; reply briefs must not exceed 7,000 words), or is
- Monospaced, has 10.5 or fewer characters per inch and contains _____ words or _____ lines of text (opening, answering, and the second and third briefs filed in cross-appeals must not exceed 14,000 words or 1,300 lines of text; reply briefs must not exceed 7,000 words or 650 lines of text).

 2. The attached brief is not subject to the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because

- This brief complies with Fed. R. App. P. 32(a)(1)-(7) and is a principal brief of no more than 30 pages or a reply brief of no more than 15 pages;
- This brief complies with a page or size-volume limitation established by separate court order dated _____ and is
- Proportionately spaced, has a typeface of 14 points or more and contains _____ words, or is
- Monospaced, has 10.5 or fewer characters per inch and contains _____ pages or _____ words or _____ lines of text.

3. Briefs in Capital Cases

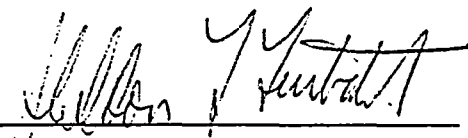
- This brief is being filed in a capital case pursuant to the type-volume limitations set forth at Circuit Rule 32-4 and is
- Proportionately spaced, has a typeface of 14 points or more and contains _____ words (opening, answering, and the second and third briefs filed in cross-appeals must not exceed 21,000 words; reply briefs must not exceed 9,800 words) or is
- Monospaced, has 10.5 or fewer characters per inch and contains _____ words or _____ lines of text (opening, answering, and the second and third briefs filed in cross-appeals must not exceed 75 pages or 1,950 lines of text; reply briefs must not exceed 35 pages or 910 lines of text).

X 4. Amicus Briefs

- Pursuant to Fed. R. App. P. 29(d) and 9th Cir. R. 32-1, the attached amicus brief is proportionally spaced, has a typeface of 14 points or more and contains 7000 words or less, or is
- Monospaced, has 10.5 or fewer characters per inch and contains not more than either 7000 words or 650 lines of text, or is
- Not subject to the type-volume limitations because it is an amicus brief of no more than 15 pages and complies with Fed. R. App. P. 32(a)(1)(5).

Dated this 22 day of March, 2004,

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United States Court of Appeals for the Ninth Circuit

San Luis Obispo Mothers for Peace, et al.)	
Petitioners)	
)	
v.)	
)	
U.S. Nuclear Regulatory Commission)	No. 03-74628
Respondent)	
)	
Pacific Gas and Electric Company)	
Intervenors)	
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion of San Luis Obispo County to File an Amicus Brief have been served upon the following persons by U.S. mail, first class on this 22nd day of March, 2004:

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Adjudication
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